U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 32950822

Date: AUG. 26, 2024

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner, a data scientist seeks classification as an alien of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Nebraska Service Center denied the petition, concluding that the record did not establish that she met the initial evidence requirements for this classification through evidence of either a major, internationally recognized award or meeting at least three of the ten evidentiary criteria under 8 C.F.R. § 204.5(h)(3). The matter is now before us on appeal pursuant to 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

To establish eligibility as an individual of extraordinary ability, a petitioner (or anyone on the petitioner's behalf) must establish that they:

- Have extraordinary ability in the sciences, arts, education, business, or athletics;
- Seek to enter the United States to continue work in their area of extraordinary ability; and that
- Their entry into the United States will prospectively substantially benefit the United States.

Extraordinary ability must be demonstrated by evidence of sustained national or international acclaim as well as extensive documentation that their achievements have been recognized in the field. Section 203(b)(1) of the Act.

The implementing regulation further states that the term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." A

petitioner can demonstrate that they meet the initial evidence requirements for this immigrant visa classification through evidence of a one-time achievement (that is, a major, internationally recognized award). If such evidence is unavailable, then they must alternatively provide evidence that meets at least three of the ten listed criteria, which call for evidence about lesser awards they may have received, published material about them in qualifying media, and their authorship of scholarly articles, among other types of evidence. 8 C.F.R. §§ 204.5(h)(2),(3).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination, assessing whether the record shows that the individual possesses the acclaim and recognition required for this highly exclusive immigrant visa classification. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011).

II. ANALYSIS

The Petitioner holds a masters degree in computer engineering, and is currently employed as a medical coding analyst while pursuing a doctoral degree in computer science.

A. Evidentiary Criteria

Because the Petitioner has not indicated or established that she received a major, internationally recognized award, she must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Director concluded that the Petitioner met two of the evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x), relating to her authorship of scholarly articles in her field and participation as a judge of the work of others in her field. We agree with the Director's conclusions. On appeal, the Petitioner asserts that she also meets the evidentiary criteria relating to published material about her and her work in the field and her original contributions of major significance in her field.[1] After reviewing all of the evidence in the record, we find that she has not established that she meets at least three of the evidentiary criteria.

> *Published material about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation.* 8 C.F.R. § 204.5(h)(3)(iii)

To meet this criterion, a petitioner must submit evidence of published material that is about them and relates to their work in their field of endeavor. The material must include the title, date, and author information, and must be published in a professional or major trade publication or other major

[1] The Petitioner does not renew on appeal her claim to the criteria at 8 C.F.R. §§ 204.5(h)(3)(ii) and (viii), relating to her membership in associations in her field which require outstanding achievements of their members and her leading or critical roles for organizations having a distinguished reputation. An issue not raised on appeal is waived. *See, e.g., Matter of O-R-E-*, 28 I&N Dec. 330, 336 n.5 (BIA 2021) (citing *Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012)).

medium. Also, in compliance with the regulation at 8 C.F.R. § 103.2(b)(3), materials in a foreign language must be accompanied by a certified English translation.

In support of her claim to this criterion, the Petitioner submits two articles published on websites with her appeal, both of which she asserts were previously submitted with her petition. However, the article published on the website www.soup.io was not included with the Petitioner's original filing or with her response to either of the two requests for evidence (RFE) issued by the Director. Because the Petitioner was put on notice and given a reasonable opportunity to provide this evidence, we will not consider it for the first time on appeal. *See* 8 C.F.R. § 103.2(b)(11) (requiring all requested evidence be submitted together at one time); *Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988) (declining to consider new evidence submitted on appeal because "the petitioner was put on notice of the required evidence and given a reasonable opportunity to provide it for the record before the denial").

Regarding the article published on www.inspirationfeed.com, the Director concluded that while it was about the Petitioner, the evidence did not establish that this website qualified as a professional or major trade publication or other major medium. On appeal, the Petitioner repeats information found at the bottom of the article in which the website claims "19+ million annual readers." But USCIS need not rely on the self-promotional material of the publisher. *See Braga v. Poulos,* No. CV 06 5105 SJO (C. D. CA July 6, 2007) *aff'd* 2009 WL 604888 (9th Cir. 2009) (concluding that self-serving assertions on the cover of a magazine as to the magazine's status is not reliable evidence of major media). Whether a certain medium qualifies under this criterion depends upon factors such as the intended audience and its relative circulation, readership, or viewership. *See generally* 6 *USCIS Policy Manual* F.2(B)(1). Despite the Director's specific request for such evidence, the Petitioner did not provide further information concerning this website and its viewership compared to others of its type, and thus has not shown it to be a professional, major trade, or other major medium. We therefore agree with the Director's conclusion that the Petitioner has not established that she meets this criterion.

> *Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.* 8 C.F.R. § 204.5(h)(3)(v)

To meet the requirements of this criterion, a petitioner must establish that not only have they made original contributions, but that they have been of major significance in the field. For example, a petitioner may show that the contributions have been widely implemented throughout the field, have remarkably impacted or influenced the field, or have otherwise risen to a level of major significance. *See Visinscaia*, 4 F. Supp. 3d at 134-35.

Initially, we note that while the Petitioner relies upon previously submitted evidence in claiming this criterion on appeal, she did not specifically claim this criterion in her previous submissions. Nevertheless, we have reviewed this evidence and conclude that it does not establish that the elements of this criterion have been met. In her brief, the Petitioner first highlights five of her papers which were either published in scholarly journals or presented at scientific conferences in the field of data science. She describes the research and implications presented in each of these papers, and refers to evidence of the number of times that others in her field have cited these papers in their own published work. In addition, she asserts that each of these articles are widely cited (including one paper cited on only two occasions) or have been of significance in her field. But the Petitioner does not provide evidence to support her statement of the impact or influence of these papers compared to the published

works of others in her field. Although the number of citations indicates that they have contributed to the field to some degree, that information is not sufficient to establish that the papers have been of major significance to the overall field of data science.

The Petitioner also asserts that the reference letters she submitted demonstrate that her contributions have been of major significance.[2] Three of those reference letters were written by individuals who collaborated with the Petitioner on data mining and pattern recognition research projects several years prior to the filing of her petition. For example, Dr. N-D- describes sequential pattern mining, and writes that the Petitioner authored "several high-profile papers" in this area. But she does not explain why she considers the three papers she identifies to be high profile or provide any level of detail regarding their contribution to the field of data science.

Similarly, H-R- writes about the applications of data mining and pattern recognition in several industries and notes that the Petitioner has made "significant scientific contributions" in those areas, but does not identify any specific contributions the Petitioner has made or explain how they may have influenced the field. Repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990).

Another former collaborator, Dr. V-K-, admits that his recommendation is not based on his direct observation of the Petitioner, yet goes on to discuss her work in the area of medical billing, declaring that she is "an excellent technical healthcare professional who will make important contributions." He later states that her work is in use in the healthcare industry, including software applications being used by health insurance providers. But given his admitted lack of personal knowledge of this work and his anticipation of its ultimate importance, this evidence does little to establish that the Petitioner had already made contributions to her field at the time her petition was filed. In addition, his statements are not supported with documentary evidence of the creation or implementation of the described work.

For all of the reasons discussed above, we conclude that the evidence does not establish that the Petitioner meets this criterion.

B. Final Merits Determination

In a final merits determination, we examine and weigh the totality of the evidence to determine whether a petitioner has sustained national or international acclaim and is one of the small percentage at the very top of the field of endeavor, and that their achievements have been recognized in the field through extensive documentation.

Here, the Petitioner has not submitted the required initial evidence of either a one-time achievement or documents that meet at least three of the ten criteria. As a result, we need not provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119-20. Nevertheless, we have

[2] Some of the reference letters mentioned by the Petitioner cannot be found in the record. The Director notified the Petitioner in both RFEs that parts of the record appeared to be missing, and provided the names of the writers of letters that are in the record. We have reviewed and considered those reference letters that are in the record, including those not specifically mentioned in this decision.

reviewed the entire record and conclude that it does not establish that the Petitioner has the acclaim and recognition required for the classification sought.

The Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than for those progressing toward the top. USCIS has long held that even athletes performing at the major league level do not automatically meet the "extraordinary ability" standard. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994). Here, the Petitioner has not shown that the significance of her work is indicative of the required sustained national or international acclaim or that it is consistent with a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990); *see also* section 203(b)(1)(A) of the Act. Moreover, the record does not otherwise demonstrate that the Petitioner has garnered national or international acclaim in the field, and that she is one of the small percentage who have risen to the very top of the field of endeavor. *See* section 203(b)(1)(A) of the Act and 8 C.F.R. § 204.5(h)(2).

ORDER: The appeal is dismissed.